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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 977

MARY BENDELARI, *Petitioner*

v.

THE UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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The petition of Mary Bendelari prays that a writ of certiorari issue to review the order of the United States Court of Claims entered in the above entitled case on December 13, 1964, granting defendant's motion for summary judgment dismissing the petition.

The written order of the court below is printed herein.

Jurisdiction of this Court is invoked under 28 United States Code, section 1255(1).

FACTS

As recited in the petition as presented to the United States Court of Claims, petitioner Mary Bendelari filed suit in the Court of Claims in order to collect royalties from the U.S. Government on the basis of her patent 1926429, and under the pertinent sections of the U.S. patent laws, together with her rights under the Clayton Act and Sherman Anti-Trust Act.

In earlier decisions, the petitioner Mary Bendelari was not a participant but Mary Bendelari was told by the person in charge of the Philadelphia Anti-Trust Division of the U.S. Department of Justice that she was considered a part of the case because there would have been no case without her patent. It was the conspiracy about her patent that permitted the U.S. Government to bring the cases to end a condition of business anarchy.

The issue is whether if the Anti-Trust Division of the Department of Justice did not protect Mary Bendelari by making her a party to the case so that in the ordinary course of events her patent could have been extended, then she is without legal redress. It was the meeting of ten men, in conspiracy, about her patent that permitted the U.S. Government action. Also, this will clarify and insure that there has been no tolling of the Statute of Limitations or the patent laws. It would ill-behoove the Government to deny full rights to Mary Bendelari when the Government's action could not have been taken without the courageous stand of Mary Bendelari. In essence, there would have been no case without Mary Bendelari.

As to collecting royalties, as to use by the Government, the fitted sheet made of non-stretchable material has been bought by the Government for use all over the world many times for many years. The Government also sells the sheets in their Post Exchanges all over the world.

In the anti-trust case, which was won against Krasnov, under anti-trust laws, both civil and criminal, Mary Bendelari was the main factor in the Government winning.

In the conspiracy the Government found that people were making the fitted sheet, with patent numbers, in conspiracy with those against Mary Bendelari. The pattern was made from the d awings on her patent. The Philadelphia office of the Anti-Trust Division stated that it was not the policy of the Government to examine conspiracies or drawings or shape of inventions. There could be no conspiracy about a thing unless it has shape, and without shape a patent is nothing.

The Philadelphia office was refusing to investigate the rest of the conspiracy against Mary Bendelari on the use of the shape of her patent. At the same time and in the same department the Government mounted the biggest anti-trust case in the country's history against the General Electric Company based on the shape of the objects priced.

If the Court could clarify that there is Federal Common Law in the Constitution, not as was broadly stated in the case of *Erie* v. *Tompkins,* 1938, that there is no such thing as General Federal Common Law. In that case the majority stated that as regards the Constitution, and Acts of Congress, that the Judicial Act of 1789, still stood, i.e., that there was so ne Federal Common Law. Written as the decision was, it has caused confusion, leading people to believe that the precious common law in the Constitution was lost. It is particularly significant in this case that this be clarified, for a patent is issued on how the invention operates, rather than on the fact of the drawing of the invention.

If you study Article 1, Section 8, paragraph 8, of the Constitution, you will find a coupling of the words, authors, and their writings, inventors and their discoveries. The inventor is the author of the writing in repose, and also the

discoverer of a moving writing, which is the invention in action. If the patent is issued only on the writing in action, then the common law, or Constitutional right to the writing in repose, should be clarified.

Copyright in any writing is automatic by the act of writing. The registration of a copyright is merely so people may file suits. Registration does not grant copyright.

In a case as simple as this one, there are still many questions to be asked, although Mary Bendelari has presumably been granted the protection of her rights in the Constitution. One example is the action of the Government in using the patent in Government installations, without payment of the royalties. Secondly, the role of the Government as business agent for others using her drawings and inventions. Thirdly, the denial of the Government, when the case was in the anti-trust division, to deny her due process of law by only investigating one-half of the conspiracy against her patent.

Mary Bendelari has her own trademark but the Government has bought her constitutional property marked with trademarks belonging to others. A trademark was created to represent the skill of an individual at his trade. What about the advertising of her sheet, by people who had copyrighted those ads of her drawing, and also sold her sheet under other trademarks?

In 1940, Mary Bendelari tried to register her copyright so that people could not advertise her sheet and was refused. Only in 1964 was she permitted to register her drawing of the copyright of the sheet. In the interim thousands of drawings of sheets had been filed by the copyright office for other people than Miss Bendelari. What about the value to Miss Bendelari of her invention? What about the value of her aspirations that produced a thing that has been so useful?

QUESTIONS PRESENTED

1. Whether Petitioner has a forum in which to enforce her rightful claims.

2. Whether under the law of the United States, petitioner is entitled to a remedy to collect a debt which the United States owes to the petitioner, but which the United States has refused to pay.

REASONS FOR GRANTING THE WRIT

It is submitted that it must follow that from a reading of the above or previous material, that the United States Court of Claims erred in its respective conclusions in this case.

Petitioner believes and avers that the questions involved in this case are of such gravity and importance that they justify the exercise of the jurisdiction vested in this Court to issue a writ of certiorari requiring the cause to be brought here for review from the Court of Claims.

Wherefore, your petitioner prays that this Honorable Court will cause the writ of certiorari to be issued pursuant to the power vested in this Court at 28 United States Code 2106.

Respectfully submitted,

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Pro Se.

IN THE UNITED STATES COURT OF CLAIMS

No. 109-64

MARY BENDELARI

v.

THE UNITED STATES

Order

This case comes before the court on defendant's motion to dismiss or in the alternative for summary judgment. Upon consideration thereof, together with plaintiff's answer thereto, and without oral argument, it is concluded, on the basis of 28 U.S.C. § 2501 and *Hebern* v. *United States,* 132 Ct. Cl. 344, that plaintiff is not entitled to recover, and

IT IS ORDERED that defendant's said motion be and the same is granted and plaintiff's petition is dismissed.

BY THE COURT

WILSON COWEN
Chief Judge

Oct. 23, 1964

Judge Collins took no part in the consideration and decision of this case.